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## THE INITIATIVE AND REFERENDUM<sup>1</sup>

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IT is very fashionable on the part of those who consider themselves conservative and given to test the safeness of things, to look upon the initiative and referendum in this country as a political fad, a part of a political disease of our people. They think this a phase we shall have passed through in a comparatively short time to return to saner methods. Yet it seems to me that those who console themselves about the progress of this institution in such a manner are taking a most superficial view. If I read our present situation as a nation aright, I believe we must see in it the awakening of a much deeper political consciousness than we have hitherto had. Heretofore our life has been occupied with economic interests, and the political factor, strident as it was at times, was nevertheless superficial—the old marching campaign was its emblem. We did have times of important political action, but in general we were more concerned with economic life. I consider the movement for the initiative and referendum as a part of that great political awakening which the nation is now experiencing and which will bring about a permanent change in our political methods.

The old party caucus with all its trickery and all its sham has been so utterly discredited that we shall never be able to go back to it. We have seen with new eyes the old-time platforms, and they will no longer satisfy us. The cry of democracy is "More democracy." It holds that as the constitutions of the past have not worked well we must have them more democratic. We are outdoing Rousseau. He pronounced for democratic action even in a large state, but could not work out the

<sup>1</sup>Read at the meeting of the Academy of Political Science, October 26, 1912.

necessary mechanism, and therefore stopped short of national democracy; he never got beyond federalism in his constructive ideas. Accordingly the modern initiative and referendum completes the Rousseauic theory, in that it considers the nation a unit, makes use of the modern advances in communication and views the electorate as one body capable of acting together.

We shall have to go through this second phase of Rousseauism. The convention phase was put to the proof during the French revolution when the older Rousseauism was thoroughly tested. Now it will be tested in all its completeness by making the people the primary factor in political action. This brings up the question of certain elements of human nature, according to which political institutions are viewed not as instruments, not as elaborating energy that already exists, but as virtually creating new energy, as if new virtues could manifest themselves through them. That is expecting too much of any institution. There exists in a people the political energy, virtue, consciousness, which seeks for a vent, which wants to manifest itself in action; and if there are impediments, institutions that dam up such energies, there will be an outbreak of some kind.

To a certain extent the energy of public opinion was hampered by our institutions of the past, and yet it would be too much to say that by creating new institutions we shall give to the body politic a different energy. There lies the chief argument against the initiative and referendum. It seems to demand too much, to consider the people as a body able to initiate, having the constant energy to watch the affairs of the state and judge their details, as well as to make themselves masters of the legislative situation. That is where the fault lies in my opinion—in the extreme, the radical policy of the initiative and referendum. There are many functions in the state. There is the function of deliberation, of judging, of taking administrative action, and to think that the function of voting in itself can take the place of any or all of these others and make them unnecessary, is expecting too much. Voting has often been used for the purpose of assisting legislation; it was used even in the Romans' day, but then there was always a clear alternative, yes or no—

a point that ought to be worked out and thoroughly. But we desire to go beyond that; we desire to have the consciousness of the people enter more intimately into the work of legislation, and yet we are expecting too much of this reform when on the one hand we believe that a popular vote can take legislative action in its fullness and completeness and thus virtually supersede the legislature, and on the other hand expect from it the political regeneration, the creation of new political forces, energies and virtues.

With these reservations, however, I consider the initiative and referendum as an institution that carries within it a great promise for our commonwealths, one that ought to be utilized and taken advantage of, and that cannot be brushed aside.

Throughout the world parliamentary bodies, have been a disappointment in not coming up to the ideal of liberalism, in not being the "councils of the wise," in which after due deliberation the best interests of the body politic are expressed in the form of law. That is not the nature of any legislative body, not even of that most excellent one, the British Parliament. Too much was expected of this institution, as of every institution when first introduced to the world. Now the tendency is in the opposite direction. In England even it is the elector that has direct relation with the controlling interest, and Parliament seems hardly more than a registering agency to record the will of the electorate and keep the ministry in power. The old dramatic struggle for influence in the House of Commons that lent life and interest to the political action of England during the greater part of the nineteenth century has almost passed away and it is now carried on before the electorate. But Parliament has not lost its importance, because it is the place where energies converge, where opinions are formed, the place for the promoting of policies, and it remains by far the most powerful and interesting body of legislation in the world. How different with our state legislatures! They have become so discredited that they offer no field for political action of a high type, and so they naturally became the instruments of the "great interests" whose leaders alone have been far-sighted enough to see how important the political power therein con-

centrated really is. Now it is in this connection—in making the body of the electorate conscious of the vital importance of state legislation—that I believe the greatest value of the initiative and referendum lies.

My expectation is that its effect will be as follows: This institution will assist the people, the body of the electorate, in the development of its political consciousness; the consciousness of power which it brings will assist in that direction. Second, it will make the body of the electorate more familiar with legislative problems and more interested. In Athenian democracy, every citizen was supposed to take part in all the functions of government, to judge, administer, elect. That is no longer possible, but nothing will so train the electorate to see the difficulties and problems of legislation, and to form an intelligent judgment about them, as having to solve those problems itself at times. Moreover, it will increase the interest of the people in the legislatures, as being organs which are constantly engaged with dealing with these important matters; and finally it will serve to increase the sense of responsibility of these bodies. We cannot of course hope to get that direct sense of responsibility which is the key to the English system, where the possibility of a dissolution and an appeal to the nation weighs constantly on Parliament and every member thereof; but the referendum, too, is an appeal to the electorate, and the adoption of the proposal rejected by the legislature in a measure parallels the return to power of a British "Opposition." At present there is no adequate way in which the electorate can express its concurrence, or its disapproval, or its indignation at what has been done. General elections are not fitted for this; at the most they may take out an important issue, make it a matter of general interest, and submit it to the people.

I have not time to go into discussion of the details of legislation thus far attempted, but if you will bear with me I will point out one or two essential matters. The legislation of Oregon to my mind is attempting too much. It expects of the electorate a constant exercise of legislative action and if this expectation should be met it would mean a removal of the

center of deliberation from the halls of legislation to the popular forum. Now the Oregonians who are the most ardent supporters of this system always protest that they did in no sense intend to discredit the legislature. Mr. U'Ren said it would be far more creditable to go to the legislature after this reform has been completely established than ten years ago, because it would no longer be *prima facie* evidence of corruption and low political motives to be a member of that body. But the actual tendency is different. If there is to be a constant exercise of the legislative function by the general electorate it cannot be expected that the legislature itself will continue important enough to deserve the attention and coöperation of really able men. In the suggestion that all that is really necessary is a council to work out administrative measures to be submitted to the electorate, we have an explicit admission of the tendency to eliminate that body which our own experience and that of other countries has shown to be of value. Between the growing administration and the electorate, there would be no intermediary, no body of men somewhat above the ordinary political intelligence, somewhat more experienced, to judge of measures which the administration suggests, to interpret them in a way to the electorate; and at the same time to give the administration assistance in getting close to public opinion and the needs of the state; the inevitable result would be a close bureaucracy. California has tried to encourage the legislature by giving it the Swiss alternative, so that it may either send a measure directly from the initiative to the electors or submit at the same time an alternative measure of its own. This is apt to cause a good deal of confusion: as has been cynically remarked by the *Evening Post*, the electors would usually vote for both measures, and then that measure which carried the majority would be declared law!

Another defect appears when laws passed by popular vote cannot be repealed except by a like vote. We have already constitutional law and legislative law and we then should have popular law in addition. Logically any action of the legislature which superseded a part of the popular law must be considered void by the courts. The complexity which is intro-

duced into our system through the fact of a judicial review would be emphasized by the California arrangement where you have three categories, legislative law, popular law and constitutional law, one standing above the other, one prevailing over the other. This is unnecessary. The Oregon courts have refused to give the popular law a higher rank than the legislative; the proposed provision in Washington is that popular law may be repealed after two years, but not before, by legislative action. It seems to me it is best to place all law on an equal footing, allowing to the popular law its prestige as having been passed on by the electorate, but giving it no artificial validity, which only introduces confusion and complexity into our system. While speaking of the California system it ought to be said that the Californians believe that the complexity of their system will be reduced, because hitherto they have amended their constitution so frequently (sometimes fifteen or sixteen amendments pending at the same time) that it became a vast code of legislative matter. After the introduction of the initiative and referendum, changes that are popular may be made without being put into the constitution, and there will not be so much judicial interference with legislation. That is their hope, and yet their provision with respect to giving a special degree of validity to the popular will seems to run counter to it.

The proposed law of Wisconsin is based on the idea that the initiative and referendum is to be an agency for assisting the legislature, but in no way making it superfluous. Accordingly any measure that is introduced into the legislature, whether passed or rejected, but only such measures, may be referred to the electorate. Thus every bill that goes before the people must have had the benefit of being discussed there and acted upon, whether favorably or unfavorably. In this way it is intended to protect the importance of the legislature, and even to increase it by centering there the public interest. If in this connection we consider the growth in importance of state governments, we see how an opportunity is given for a governor, if he is a constructive statesman, to have his measures introduced in the legislature, to have it known that they go with the endorsement of his political judgment, and if they are defeated in that body to have them called out and referred to the public.

It is not believed that the people will be constantly legislating. That is where most of the opponents of the system argue wrongly, one might almost say deceitfully. The recall is a power to be used only very rarely, and the referendum is, perhaps, best understood as giving the electorate the right and power to make itself felt at any time without revolutionary action. We are living at the present time in a period of almost revolutionary energy, but that will pass away. These energies are not permanent; it is necessary to count upon the steady interest of the public in politics, but of that we cannot expect too much. Our constitutional machinery ought to be so adjusted that the force of public opinion would be sufficient to start, stop or control it. There ought to be means by which the public can obtain a specific law which it demands and which is blocked by our state legislatures.

The initiative and referendum will introduce clearness and logical sequence into our political action, and center the public interest on legislative problems, but will not mean that every matter of legislation will be laid before the electorate to the wearying of political energies. The Wisconsin legislation is an experiment, but one which bases itself upon the premise that the legislatures are performing a function that cannot be fulfilled by mere voting, and that this function must be strengthened, elevated and purified but not extinguished or passed over to a body which cannot deliberate as a legislative body can. It is thus that I consider the initiative and referendum to be a reform in true harmony with the great movement which is passing over our nation at the present time. There will be a liberation of political energies when it is possible for the energies at any time to make themselves decisive. The initiative and referendum will have a clarifying and quieting effect, because as everybody knows, the people are essentially conservative. If they have the knowledge that it is in their power to ask and obtain, it will be a safety valve in the most dangerous periods through which our republic may have to pass. And in all times it will be an education for the people, just as it is in the English democracy, to feel that at any time they may have to vote, and that any important measure may be brought to them for their pronouncement.